FILE COPY

IN THE

Supreme Court of the United States

October Term, 1959

No. 222

HELEN COVINGTON, *et al.*,

Petitioners,

—v.—

J. S. EDWARDS, Superintendent of Schools of Montgomery County, North Carolina, *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above-entitled case on March 19, 1959.

Citations to Opinions Below

The opinion of the District Court (R.[1] 49a), printed in the Appendix hereto, *infra*, p. 24, is reported in 165 F. Supp. 957. The opinion of the United States Court of Appeals (R. 73), printed in the Appendix hereto, *infra*, p. 29, is reported in 264 F. 2d 780.

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[1] R. refers to the record herein which consists of the appendices to the briefs filed and the proceedings in the court below.

Jurisdiction

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on March 19, 1959 (R. 81; p. 35, *infra*). On June 16, 1959 the Chief Justice extended time for filing this petition to and including July 17, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Question Presented

Whether the Fourteenth Amendment requires that respondent school officials devote every effort toward initiating desegregation and bringing about the elimination of racial discrimination in the public school system of Montgomery County, North Carolina, or whether, as the Courts below held, the board may reject petitioners' petition for desegregation, continue its plan of segregated schools, and relegate individual Negro children seeking their constitutional right to non-segregated education to a pupil placement procedure whereby they must apply to particular white schools in the school system which continues to be conducted on a segregated basis.

Constitutional and Statutory Provisions Involved

This case involves the following constitutional provisions and statutes:

1. United States Constitution, Amendment 14, §1.

2. General Statutes of North Carolina, §§115-176 to 115-179. (North Carolina Assignment and Enrollment of

Pupils Act). The statute is printed in the Appendix, *infra*, p. 21.[2]

Statement

The complaint in this action was filed on July 29, 1955 in the United States District Court for the Middle District of North Carolina by petitioners, a group of Negro school children in Montgomery County, North Carolina, and their respective parents and guardians as next friends and individually, against respondents, the Superintendent of Schools and the members of the Montgomery County Board of Education.

The jurisdiction of the District Court was invoked pursuant to 28 U. S. C. 1331, 28 U. S. C. 1343, and 8 U. S. C. 41, 43 (which now appear as 42 U. S. C. 1981, 1983). The action was brought as a class action pursuant to Rule 23(a)(3) Federal Rules of Civil Procedure.

On September 7, 1954 Negro residents of Montgomery County, North Carolina, submitted a petition to respondents setting forth this Court's holding in *Brown* v. *Board of Education*, stating that in spite of that decision segregation continued to be enforced in the county schools and praying that they be desegregated (R. 23a, 24a). When this petition was denied complaint was filed in the United States District Court.

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[2] When this litigation commenced, the North Carolina pupil assignment statute had not yet been amended to its present form. As originally written the statute provided that applications for change of assignment should be directed to the appropriate public school official. It now provides that application is to be made to the board of education. None of the parties nor the courts below have viewed this change as material to this suit (§115-178).